July 26, 2005

Senator Cornyn, "Consultation a moving target for Dems," The Hill, 7/26/05

Editorial, "Nefarious ties," Wall Street Journal, 7/26/05

Noteworthy

"The administration officials said the White House would work with the National Archives and the Ronald Reagan Presidential Library to expedite processing of roughly 50,000 pages of documents from 1982 to 1986, when Judge Roberts was an assistant counsel in the Reagan White House. About 4,000 pages of documents from that period have already been made public, but those have not included papers pertaining to Judge Roberts's work on a broad array of topics including the Iran-contra scandal, school prayer and civil rights issues.

"The officials said the administration had decided to waive any claim to attorney-client privilege from those documents because the papers are covered by the Presidential Records Act, the law that governs the disposition of presidential papers. The administration's position, one of the officials said, is that there is a "presumption of disclosure" when it comes to documents covered by the act. Under the law, the current White House has final say over what presidential documents are made public."

"Some Documents of Supreme Court Choice Will Be Released," New York Times, 7/26/05

MSNBC'S CHRIS MATTHEWS: "Does [Roberts] Believe In Precedent?

SEN. FEINSTEIN: "Yes, he does believe in precedent. And, he is very cautious and he's very studious, and in no way, shape or form do I believe he puts any ideology before the law, nor do I believe he would be an activist in the law. I see none of those signs in anything he has done or said..."
Senator Feinstein, MSNBC's, "Hardball," 7/25/05

USA TODAY Poll – July 22 – 24, 2005

As you may know, John Roberts is the person nominated to serve on the Supreme Court. Would you like to see the Senate vote in favor of Roberts serving on the Supreme Court or not?

Yes, vote in favor – 59% **No, would not – 22%** **No opinion – 19%**

Consultation a moving target for Dems
By Sen. John Cornyn (R-Texas)
The Hill, 7/26/05

Recent developments threaten to politicize further the current judicial-confirmation crisis. Following the retirement announcement of Justice Sandra Day O'Connor, a number of senators demanded a role not only in the confirmation process but also the selection process for appointing the justice to succeed her.

Despite the absence of any consultation requirement regarding the advice-and-consent responsibility described in Article 2, Section 2 of the United States Constitution, President Bush engaged in unprecedented consultation before his nomination of Judge John G. Roberts Jr., meeting with 70 senators during his decision-making process.

Now it appears that the quality of this unprecedented consultation is being called into question. Late Tuesday afternoon, one Democratic senator said, "So far, no one that I know of has been consulted in the way we wanted." And the senior Judiciary Committee Democrat has voiced his disappointment as well: "Well, there has been some reaching out to Democrats, but certainly not to the extent we saw during the Reagan or Clinton administration."

It appears that Democratic criticism on the consultation front is a moving target.

The Constitution requires no pre-nomination discussions with the Senate or with individual senators. Any pre-nomination consultation the president engages in is purely at his discretion. Although the president is certainly free to entertain suggestions made by senators, neither the Constitution nor Senate tradition establishes the wisdom of such a course.

Neither the Constitution nor Senate tradition confers any responsibility or authority upon individual senators to recommend nominees to the Supreme Court or imposes any obligation upon the president to seek advice from senators prior to announcing a bipartisan nomination. Nevertheless, President Bush has, in good faith, engaged in unprecedented consultation with senators regarding his prospective Supreme Court nominee.

It has long been recognized and understood that the Senate's advice-and-consent role is limited to the appointment and not the nomination of judges. The Constitution explicitly states: "The President … shall nominate, and by and with the Advice and Consent of the Senate, shall appoint … Judges." Much is made of the word "Advice," but the Advice and Consent Clause establishes only that the Senate's approval is necessary, but not sufficient, for the president to appoint an individual. The Senate must give advice on a nomination or a treaty submitted by the president, but it is the president who must — both initially and ultimately — decide.

An independent judiciary is a vital institution and is the very foundation of our system of government. Few things would politicize our judiciary more than to hand over control of the process for selecting Supreme Court justices to individual members of the United States Senate. The text of the Constitution nowhere contemplates a formal role for the Senate as an institution — let alone individual senators — to advise on selecting justices of the Supreme Court.

Good-faith cooperation between the branches — and between both political parties — is both desirable and helpful to the effective operation of government. But such cooperation must be a two-way street. The preferences of an individual senator should not distract any president from his constitutional responsibility to select individuals who are committed to interpreting faithfully the law on behalf of the American people.

Cornyn, a former attorney general of Texas and Texas Supreme Court justice, sits on the Senate Judiciary Committee.

Nefarious Ties

Editorial: Wall Street Journal
July 26, 2005

The reasons to worry about Supreme Court nominee John Roberts continue to accumulate. First we learned he attended Harvard, which is always suspicious. Then the New York Times informed us that his wife, who is also a Catholic lawyer, not only worked pro bono for Feminists for Life but has in the past "attended Mass several times a week." Holy mackerel.

Then yesterday brought the Washington Post's scoop that Judge Roberts may once have been a card-carrying member of the Federalist Society. Mr. Roberts has said that he doesn't recall belonging to the lawyers' outfit. But in the best tradition of Woodward and Bernstein, Post reporters dug through the society's "secret" enrollment lists and -- there it was, in black and white, the name of John Roberts, member 1997-98. This news actually made page one.

The Post's exposé continues: "The Federalist Society was founded in 1982 by conservatives who disagreed with what they saw as a leftist tilt in the nation's law schools. The group sponsors legal symposia and similar activities and serves as a network

for rising conservative lawyers." That's a subversive group if there ever was one, not least because we've seen with our own eyes that representatives of the ACLU have sometimes attended these public "symposia," and without disguising their identities.

We don't know whether these news stories illustrate the desperation of liberals who can't find any real mud to throw at Judge Roberts, or whether they've been planted by the White House to make liberals look silly. Come to think of it, liberals these days don't need any White House help.

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